

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THE SAILTIME GROUP, LLC

105 Eastern Avenue,
Suite 102
Annapolis, Maryland 21403

*

Plaintiff

*

v.

*

**PASSAGE NAUTICAL ENTERPRISES,
INC.**

1220 Brickyard Cove Road
Richmond, California 94801

*

*

Defendant

Serve On:

Deborah Reynolds
1220 Brickyard Cove Road
Richmond, California 94801

*

*

* * * * *

COMPLAINT

Plaintiff, The SailTime Group, LLC (“SailTime”), hereby brings this Complaint against Defendant Passage Nautical Enterprises, Inc. (“Passage Nautical”), for trademark infringement, breach of contract, and other related claims, and in support thereof states:

THE PARTIES

1. SailTime is a Maryland limited liability corporation with its principal place of business at 105 Eastern Avenue, Suite 102, Annapolis, Maryland 21403. SailTime, among other things, provides brokerage and management services of fractional interests in sailboats and powerboats through franchisees around the United States, as well as certain foreign countries.

2. Passage Nautical is a California corporation with a principal place of business at 1220 Brickyard Cove Road, Richmond, California 94801. Upon information and belief, Passage Nautical has provided brokerage and management services of fractional interests in sailboats and powerboats in the San Francisco, California area, and continues to be in the business of boat club management and the sale of powerboats and sailboats.

JURISDICTION AND VENUE

3. This action arises under the United States Trademark Act, 15 U.S.C. §1051 *et seq.* (“The Lanham Act”). This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§1331 and 1338.

4. This Court also has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §1332 as it involves a dispute between citizens of different states and the amount in controversy is over \$75,000.00, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant as Passage Nautical is accused of breaching an agreement which included a provision providing for jurisdiction in this Court in the event of any dispute arising from or relating to that agreement. Passage Nautical also market and promotes its goods and services across the country, including in this District, using trademarks that infringe trademarks owned and used by SailTime.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and (c).

FACTUAL ALLEGATIONS

7. While sailing and power boating are extremely popular throughout the United States and the world, sailboat and powerboat ownership can be quite expensive and time consuming. As a result, sailboat and powerboat timeshares and ownership clubs have become

popular means for individuals to reduce the cost of boat ownership by spreading those costs among multiple individuals.

8. The details and logistics of these boat timeshares and clubs, however, have proven difficult to manage. When are members permitted to use any particular vessel? Who is responsible for cleaning, maintenance, and repair? How will the costs of maintenance and repairs be shared? These are just some of the details and logistical issues confronting timeshare owners and boat club members that have hindered their adoption and growth.

9. Recognizing these concerns, during the early 2000's, SailTime developed proprietary fractional boat membership procedures to address issues that had previously confronted timeshare and boat clubs, and since then has continuously operated or licensed others to operate fractional boating businesses under the SailTime name. These proprietary procedures have been modified and refined over the years, making it the most popular fractional boat membership program in the world with franchisees not only across the United States, but also in several foreign countries, including Australia, Spain, and Italy.

10. SailTime's fractional boat membership is not like other boat clubs and timeshare plans as members become a member of a specific vessel with only six to eight other members. Each member is guaranteed a specific amount of usage every month depending on the member's particular membership level. Membership fees include not only the cost of the vessel, but also insurance, marina fees, cleaning, maintenance, repairs, and fuel. SailTime members enjoy many of the advantages of ownership including being able to schedule quick sunset sails or multi-day cruises without any of the hassles of cleaning, maintaining, repairing, and storing their crafts. Scheduling time to use a vessel is easy on a mobile phone or computer using SailTime's proprietary cloud-based membership application.

11. SailTime's proprietary procedures provide franchisees with favored access to vendors, highly competitive pricing, and state of the art proprietary software making SailTime the leader in the fractional boating industry.

12. SailTime is the owner of the following trademarks registered with the United States Patent and Trademark Office (the "SailTime Marks"):

Mark	Registration No.	Registration Date	Date of First Use in Commerce	Goods
SAILTIME	4,117,476	March 27, 2012	January 1, 2003	<p>Class 35: Business management and operation assistance to yacht and boat owners and operators and to boat charter services and boat captain services.</p> <p>Class 36: Formation, brokerage and management of time share and fractional interests in sailboats and powerboats.</p> <p>Class 39: Charter boat services; rental of boats available to members of a boating club and the general public.</p> <p>Class 43: Rental of boating related sports equipment available to members of a boating club and the general public; training in the use and operating of sailboats.</p>

 SailTime	3,722,114	December 8, 2009	May 1, 2009	Class 36: Formation, brokerage and management of timeshare interests in sailboats and powerboats.
 SailTime your boat is ready when you are	3,846,144	September 7, 2010	November 1, 2009	Class 36: Formation, brokerage and management of timeshare interests in sailboats and powerboats.

Copies of SailTime's U.S. Trademark Registrations Nos. 4,117,476; 3,846,144; and 3,722,114 (the "SailTime Registrations") are collectively attached as ***Exhibit A***.

13. Issuance of the SailTime Registrations are *prima facie* evidence of the validity of the SailTime Marks, of the registration of these marks, of SailTime's ownership of these marks, and of SailTime's exclusive right to use the SailTime Marks in commerce and in connection with the goods specified in the SailTime Registrations.

14. Each of the SailTime Registrations have achieved incontestable status.

15. SailTime first began offering fractional memberships in powerboats in 2006 under the trademark SAILTIME POWER. Beginning in late 2016, SailTime began plans to broaden and focus on its already successful fractional powerboat membership offering. As part of this plan, SailTime intended to market powerboat fractional boating memberships under a separate trademark. POWERTIME was among the marks considered, and was eventually chosen. This mark would capitalize on the goodwill and fame embodied by the SailTime Marks, as well as the SAILTIME POWER mark, by causing members and potential members to recognize that sailboat fractional interests marketed under the SailTime Marks and powerboat fractional

interests marketed under the POWERTIME mark both come from SailTime and are managed by SailTime's outstanding staff and proprietary fractional boating procedures.

16. In anticipation of this new marketing strategy for SailTime's fractional powerboat memberships, SailTime filed an application with the United States Patent and Trademark Office for the POWERTIME mark (the "Powertime Application"). This application (Serial No. 88/062,836) identifies the following goods and services to be marketed under that mark:

Class 35 - Business management and operation assistance to yacht and boat owners and operators and to boat charter services and boat captain services.

Class 36: Formation, brokerage, and management of timeshare and fractional interests in powerboats.

Class 39: Charter boat services; rental of boats available to members of a boating club and the general public.

Class 41: Training in the use and operating of powerboats.

The Powertime application was published for opposition on January 1, 2019 while a notice of allowance was issued on February 26, 2019.

17. On June 18, 2019, SailTime's counsel of record for the Powertime Application received a letter from a lawyer claiming to represent Passage Nautical. That letter claims that since as early as September 2015, Passage Nautical has been providing boat rental and sale services under the POWERTIME trademark. This letter goes on to assert that SailTime's use of the POWERTIME mark in connection with the services identified in its federal trademark application may cause confusion, mistake, and/or deception as to the source of its services; namely that the public, members of the trade, and others are likely to believe that SailTime's services are provided, sponsored, approved, or licensed by Passage Nautical or affiliated in some way with Passage Nautical. The letter further demands that SailTime abandon the Powertime Registration and cease all use of the POWERTIME mark.

18. Passage Nautical was not unfamiliar to SailTime. In late 2016, Passage Nautical's President, Deborah Reynolds ("Ms. Reynolds"), first met with representatives of SailTime at a trade show. The parties then began discussions regarding Passage Nautical becoming a SailTime franchisee in the San Francisco, California area where it was then currently operating a sail and powerboat sales business. SailTime's representatives were under the impression at that time that Passage Nautical did not operate any timeshare, boat club, or fractional boating business, nor was Passage Nautical using the POWERTIME mark.

19. After their initial meeting, and prior to any serious negotiations taking place or any disclosure by SailTime of any confidential or proprietary information related to its fractional boating business or proprietary applications, SailTime's CEO, Todd Hess, asked Ms. Reynolds to execute a Non-Disclosure Agreement, a copy of which is attached as ***Exhibit B*** (the "Non-Disclosure Agreement"). In short, this Non-Disclosure Agreement obligated Ms. Reynolds and Passage Nautical to maintain the confidentiality of all confidential information provided to them by SailTime and not to use such information for any purpose other than analyzing the business of SailTime and their interest in entering into a SailTime franchise agreement.

20. The Non-Disclosure Agreement provides, among other things, that:

The laws of the United States and the State of Maryland govern this Agreement. [Passage Nautical] irrevocably submits to the non-exclusive jurisdiction of the Maryland courts (including if necessary Courts exercising federal jurisdiction) and courts of appeal of those courts. In addition, [Passage Nautical] agrees that, if SailTime prevails in any action arising from or related to this Agreement, [Passage Nautical] shall be obligated to pay SailTime all of its reasonable costs incurred in connection with the action, including (but not limited to) attorneys' fees and court costs.

Accordingly, Passage Nautical submitted to the jurisdiction of this Court for any action arising from or related to the Non-Disclosure Agreement. This case, at least in part, arises from and relates to a breach of the Non-Disclosure Agreement.

21. Not long thereafter, on March 31, 2017, Ms. Reynolds, on behalf of Passage Nautical, expressed her “sincere interest in obtaining a SailTime franchise” and asked SailTime to “prepare a signature ready Franchise Agreement for” the San Francisco area as she had discussed with Mr. Hess and others from SailTime. A copy of the executed Letter of Intent dated March 31, 2017, is attached as ***Exhibit C***.

22. Thereafter, on April 5, 2017, Ms. Reynolds, on behalf of Passage Nautical, executed a document titled “Receipt Of Disclosure Document For Franchises Offered By The SailTime Group, LLC,” a copy of which is attached as ***Exhibit D***. This document recognized that SailTime forwarded its 196-page Franchise Disclosure Document (“FDD”) to Ms. Reynolds and Passage Nautical. The FDD provides details regarding SailTime’s franchise offering including both SailTime and Passage Nautical’s respective obligations if Passage Nautical enters into a franchise agreement with SailTime. The FDD includes a copy of the Franchise Agreement offered to Passage Nautical.

23. Both before and after SailTime’s provision of the FDD to Passage Nautical, Mr. Hess and other SailTime representatives provided Ms. Reynolds with detailed information about SailTime’s fractional boating procedures. This included disclosure of SailTime’s financial calculator which provides franchisees with detailed analysis of both the income and expense options related to a franchisee’s offering of fractional interests in a variety of different size and types of boats. SailTime also provided Ms. Reynolds with a confidential demonstration of its proprietary cloud-based member application.

24. Eventually, for reasons that were never fully articulated to Mr. Hess or any other representative of SailTime, Passage Nautical did not enter into a franchise agreement with SailTime. Upon information and belief, armed with SailTime’s confidential and proprietary

information about how to operate and manage a fractional boating business, Passage Nautical believed that it could operate and manage a competing business without having to pay SailTime any franchise fees as outlined in the FDD.

25. Upon information and belief, Passage Nautical has used the confidential information it received from SailTime pursuant to the Non-Disclosure Agreement regarding SailTime's methods and business practices to operate a fractional boating business in the San Francisco, California area. This business has competed with SailTime's business; most notably, the business of its franchisee also located in the San Francisco, California area.

26. Passage Nautical, without authorization from SailTime, uses the POWERTIME trademark across the country to promote its business. Passage Nautical also has used the tagline YOUR BOAT IS READY WHEN YOU ARE as part of its nationwide marketing of its business. This is the same tagline that SailTime has used since at least 2009 and is included as part of SailTime's registered trademark (Registration No. 3,846,144).

27. Passage Nautical's use of the POWERTIME mark and the YOUR BOAT IS READY WHEN YOU ARE tagline is likely to cause confusion, mistake, and/or deception as to the origin of Passage Nautical's business and services; namely that the public, members of the trade, and others are likely to believe that Passage Nautical services are provided, sponsored, approved, endorsed, or licensed by SailTime or affiliated with SailTime's services, particularly those offered by its San Francisco franchisee.

28. Upon information and belief, Passage Nautical's use of the POWERTIME mark and the YOUR BOAT IS READY WHEN YOU ARE tagline is intended to improperly trade off SailTime's goodwill.

29. As a result of Defendant's breach of the Non-Disclosure Agreement, trademark infringement, and unfair competition, Plaintiff has suffered, and continues to suffer, damages.

**FIRST CAUSE OF ACTION
(Infringement of Registered Mark)**

30. SailTime repeats and realleges Paragraphs 1 through 29 as if fully set forth herein.

31. SailTime has used the SAILTIME mark since at least 2003 and the other SailTime Marks since at least 2009. SailTime is the owner of uncontested registrations for the SailTime Marks. Accordingly, SailTime has significant rights to the SAILTIME marks.

32. As a result of SailTime's long time use of, significant investment in, and registration of, the SailTime Marks, the SailTime Marks have become famous and are valuable and critical assets of SailTime.

33. Passage Nautical's use of the POWERTIME mark and the YOUR BOAT IS READY WHEN YOU ARE tagline is likely to cause confusion, mistake, and/or deception as to the source of origin of Passage Nautical's business and services; namely that the public, members of the trade, and others are likely to believe that Passage Nautical goods and services are provided, sponsored, approved, endorsed, or licensed by SailTime or affiliated with SailTime's services, particularly those offered by its San Francisco franchisee.

34. Passage Nautical's use of the POWERTIME mark and the YOUR BOAT IS READY WHEN YOU ARE tagline constitutes infringement of registered trademarks in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

**SECOND CAUSE OF ACTION
(LANHAM ACT UNFAIR COMPETITION)**

35. SailTime repeats and realleges Paragraphs 1 through 34 as if fully set forth herein.

36. SailTime has used the mark SAILTIME since at least 2003 and the other SailTime Marks, including the YOUR BOAT IS READY WHEN YOU ARE tagline, since 2009. Accordingly, SailTime has significant rights to the SAILTIME mark and the YOUR BOAT IS READY WHEN YOU ARE tagline.

37. As a result of SailTime's long time use of, and significant investment in, the SailTime Marks and the YOUR BOAT IS READY WHEN YOU ARE tagline, such marks and tagline have become famous are valuable and critical assets of SailTime.

38. Passage Nautical's use of the POWERTIME mark and the YOUR BOAT IS READY WHEN YOU ARE tagline to advertise and promote its business is likely to cause confusion, cause mistake, or to deceive as to the affiliation, connection, or association of Passage Nautical with SailTime, or as to the origin, sponsorship, or approval of Passage Nautical's goods and services or commercial activities by SailTime in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

**THIRD CAUSE OF ACTION
(Common Law Trademark Infringement)**

39. SailTime repeats and realleges Paragraphs 1 through 38 as if fully set forth herein.

40. SailTime has used the mark SAILTIME since at least 2003 and the other SailTime Marks, as well as the YOUR BOAT IS READY WHEN YOU ARE tagline, since at least 2009. Accordingly, SailTime has significant rights to the SAILTIME Marks and the YOUR BOAT IS READY WHEN YOU ARE tagline.

41. As a result of SailTime's long time use of, and significant investment in, the SailTime Marks and the YOUR BOAT IS READY WHEN YOU ARE tagline, such marks have become famous and are valuable and critical assets of SailTime.

42. Passage Nautical's use of the POWERTIME mark and YOUR BOAT IS READY WHEN YOU ARE tagline to advertise and market its business constitutes trademark infringement in violation of the common law of the State of Maryland.

**FIFTH CAUSE OF ACTION
(Breach of Contract)**

43. SailTime repeats and realleges Paragraphs 1 through 42 as if fully set forth herein.

44. The Non-Disclosure Agreement is a valid, binding, and enforceable agreement between Passage Nautical and SailTime.

45. Passage Nautical breached the Non-Disclosure Agreement by utilizing some, if not all, of the confidential information disclosed to it by SailTime during their franchise negotiations to open and operate a competing fractional boat business in the San Francisco, California area, the same geographic area as one of SailTime's franchisees.

46. As a result of such breach, SailTime has incurred significant damages.

DEMAND FOR JURY TRIAL

The SailTime Group, LLC demands a jury trial on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff, The SailTime Group, LLC, respectfully requests that:

A. the Court enter an injunction ordering that Passage Nautical, as well as its agents, officers, employees and all other persons in privity or acting in concert with it, be enjoined from using the POWERTIME and YOUR BOAT IS READY WHEN YOU ARE marks, or any other marks confusingly similar to the SailTime Marks or the YOUR BOAT IS READY WHEN YOU ARE mark to advertise or promote its business or any other business relating to the sale or lease of sailboats or powerboats

B. the Court enter an injunction ordering that Passage Nautical, as well as its agents, officers, employees and all other persons in privity or acting in concert with it, be enjoined from using SailTime's confidential information;

C. the Court enter an order against Passage Nautical awarding SailTime damages for Passage Nautical's improper actions identified above in an amount to be determined by the Court, but in no event, less than \$75,000.00;

D. the Court enter an order against Passage Nautical awarding SailTime an amount equal to the amounts incurred by it in prosecuting its claims in this matter, including amounts for reasonable attorneys' fees and costs; and

E. the Court enter an order awarding such other relief as it may deem appropriate.

Respectfully submitted,

/s/Steven E. Tiller
Steven E. Tiller, Bar No. 11085
Whiteford Taylor & Preston L.L.P.
Seven Saint Paul Street
Suite 1500
Baltimore, Maryland 21202-1636
(410) 347-9425
stiller@wtplaw.com

Attorneys for The SailTime Group, LLC